

# Mutual Non-Disclosure Agreement



**bürkert**  
FLUID CONTROL SYSTEMS

Version F – 04/2023

## Mutual Non-Disclosure Agreement

between and by

### **Bürkert Werke GmbH & Co. KG,**

with registered offices at Christian-Bürkert-Straße 13-17, 74653 Ingelfingen, Germany,

**Contact person:** [Name contact person]

- hereinafter referred to as "Bürkert" -

and

**[enter Supplier / Business partner entity name],**

with registered offices at [enter full address, country],

**Contact person:** [Name contact person]

- hereinafter referred to as "Supplier" -

Bürkert and Supplier are hereinafter collectively referred to as the "Parties" -

### **Preamble & Purpose**

The Parties are interested in exchanging selected information for the sole purpose of [evaluation of potential areas for cooperation in the area of water monitoring technology, products or systems ] (hereinafter referred to as the "Purpose");

In relation to the Purpose, information has been or will be disclosed by either or both Parties.

The Parties want to safeguard that such information, which each may disclose to the other, is used only for the Purpose and protected from further disclosure.

Accordingly, the Parties agree to the following terms and conditions:

## **1 General Definitions**

In this Agreement unless the context otherwise requires:

- (1) "Disclosing Party" means the Party disclosing Confidential Information to the Receiving Party.
- (2) "Permitted Recipients" means any director, officer, employee, adviser or auditor of the

Receiving Party or any of its Related Companies who reasonably needs to know Confidential Information for the Purpose.

- (3) "Receiving Party" means the Party receiving Confidential Information from the Disclosing Party.
- (4) "Related Company" means any corporation, company or other entity that controls, or is controlled by, one Party or by another Related Company of that Party, where control means ownership or control, direct or indirect, of more than fifty (50) per cent of that corporation's, company's or other entity's voting capital.

## **2 Definition of Confidential Information**

- (1) "Confidential Information" means any information or data, or both, communicated by or on behalf of the Disclosing Party to the Receiving Party, including, but not limited to, any kind of business, commercial or technical information and data in connection with the Purpose, except for information that is demonstrably non-confidential in nature. The information shall be Confidential Information, irrespective of the medium in which that information or data is embedded, and whether the Confidential Information is disclosed orally, visually or otherwise.
- (2) Confidential Information shall include any copies or abstracts made of it as well as any products, apparatus, modules, samples, prototypes or parts that may contain or reveal the Confidential Information.
- (3) Confidential Information is limited to information disclosed on or after the date of signature of this Agreement.

## **3 Secrecy and restricted use**

The Receiving Party shall:

- (1) not disclose any Confidential Information to anyone except to the Permitted Recipients, who are bound to the same level of confidentiality obligations as set forth by this Agreement;
- (2) use any Confidential Information exclusively for the Purpose;
- (3) refrain from any imitation of product, reverse engineering (for the duration of this Agreement or [5] years, whichever later), decompile or disassemble any product element, software or part thereof which is Confidential Information of the Disclosing Party; and

- (4) keep confidential and hold all Confidential Information with no less a degree of care as is used for the Receiving Party's own confidential information and at least with reasonable care. This includes appropriate technical and organizational measures to ensure a level of data security related to data protection and that the Permitted Recipients authorized to process personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

#### **4. Exclusions**

The obligations under Article 3 to keep confidential all Confidential Information shall not apply to the extent that the Receiving Party can prove that any of that information:

- (1) was in the Receiving Party's possession without an obligation of confidentiality prior to receipt from the Disclosing Party;
- (2) is at the time of disclosure, or subsequently becomes, generally available to the public through no breach of this Agreement by the Receiving Party or any Permitted Recipient;
- (3) is lawfully obtained by the Receiving Party from a third party without an obligation of confidentiality, provided that third party is not, to the Receiving Party's best knowledge, in breach of any obligation of confidentiality to the Disclosing Party relating to that information; or
- (4) is developed by the Receiving Party or its Related Companies independent of any Confidential Information.

#### **5. Copies**

Unless otherwise specified by the Disclosing Party at the time of disclosure, the Receiving Party may make copies of the Confidential Information to the extent necessary for the Purpose.

#### **6. Refusal and competition**

- (1) Nothing in this Agreement shall obligate either Party to disclose any information. Each Party has the right to refuse to accept any information under this Agreement prior to any disclosure. Confidential Information disclosed despite an express prior refusal is not covered by the obligations under this Agreement.
- (2) The receipt of Confidential Information pursuant to this Agreement will not prevent or in any way limit either Party from developing, making or marketing products or services that are or may be competitive with

the products or services of the other; or providing products or services to others who compete with the other Party; as long as those results have not become from a breach of this Agreement.

#### **7. No licence, right to use or ownership**

Nothing in this Agreement shall affect any rights the Disclosing Party may have in relation to the Confidential Information, neither shall this Agreement provide the Receiving Party with any right or licence under any patents, copyrights, trade secrets, or the like in relation to the Confidential Information, except for the use of Confidential Information in connection with the Purpose and in accordance with this Agreement.

#### **8. No warranty**

The Disclosing Party makes available the Confidential Information as is and does not warrant that any of this information that it discloses is complete, accurate, free from defects or third party rights, or useful for the Purpose or other purposes of the Receiving Party.

#### **9. No further obligations**

This Agreement does not:

- (1) create any other relationship;
- (2) oblige a Party to enter into any other contract; or
- (3) require consideration for any information received.

#### **10. Term, termination, surviving obligations**

- (1) This Agreement enters into force by signing of all Parties and ends 3 years after the last exchange of Confidential Information. Upon the expiry of the term, the Receiving Party shall stop making use of the Confidential Information.
- (2) Notwithstanding the foregoing, the Receiving Party's duty to hold in confidence Confidential Information that was disclosed during the term shall remain in effect indefinitely.

#### **11. Breach and remedies**

In addition to any remedies under the applicable law, the Parties recognize that any breach or violation of any provision of this Agreement may cause irreparable harm to the other Party, which money damages may not necessarily remedy. Therefore, upon any actual or impending violation of any provision of this Agreement, either Party may obtain from any court of competent

jurisdiction a preliminary, temporary or permanent injunction, restraining or enjoining such violation by the other Party or any entity or person acting in concert with that Party.

## 12. Disposal

- (1) Within ninety (90) days of termination of this Agreement, the Disclosing Party may request the disposal of the Confidential Information. Disposal means execution of reasonable measures to return or destroy all copies including electronic data. Destruction shall be confirmed in writing. Disposal shall be effected within thirty (30) days of the request being made.
- (2) The provisions for disposal shall not apply to
  - (i) copies of electronically communicated Confidential Information,
  - (ii) Confidential Information made as a matter of routine information technology backup, and
  - (iii) to Confidential Information or copies of it that must be stored by the Receiving Party or its advisers according to provisions of mandatory law,provided that this Confidential Information or copies of it shall be subject to continuing obligations of confidentiality under this Agreement; but no further use shall be permitted as from the date of the request.
- (3) Notwithstanding the previous paragraphs under this Article, the Disclosing Party may request the Recipient deletion of Personal Data to the extent necessary under Disclosing Party's data protection obligations and the Recipient agrees to delete such data.

## 13. Mandatory disclosures and protective order

- (1) Neither Party shall be in breach of this Agreement to the extent that it can show that any disclosure of Confidential Information was made solely and to the extent necessary to comply with a statutory, judicial or other obligation of a mandatory nature, afterwards referred to as "Mandatory Obligation".
- (2) Where a disclosure is made for these reasons, the Party making the disclosure shall ensure that the recipient of the Confidential Information is made aware of and asked to respect its confidentiality.

- (3) This disclosure shall in no way diminish the obligations of the parties under this Agreement except to the extent that a Party is compelled by any Mandatory Obligation to disclose Confidential Information without restriction.
- (4) To the extent permitted by any Mandatory Obligation, the Receiving Party shall notify the other Party without delay in writing as soon as it becomes aware of an enquiry or any process of any description that is likely to require disclosure of the other Party's Confidential Information in order to comply with any Mandatory Obligation.

## 14. Good faith and fair dealing and Data Privacy

- (1) In carrying out their obligations under this Agreement, the Parties will act in accordance with the principles of good faith and fair dealing. The provisions of this Agreement, as well as any statements made by the Parties in connection with this Agreement, shall be interpreted in accordance with the principles of good faith and fair dealing.
- (2) The Parties agree that exchange of Personal Data may occur ancillary to the Purpose and that any such Personal Data shall be dealt with in accordance with the data privacy rules applicable to the disclosing Party's data protection obligations and, if necessary, the Parties agree to execute separate agreements based on reasonable terms.

## 15. Dispute resolution and governing law

- (1) In case of disputes between the Parties, which could not be solved amicably, such dispute shall be submitted to the courts of the jurisdiction of the non-initiating Party in such dispute. This Agreement shall be governed by and construed in accordance with the laws of that jurisdiction. However, the Disclosing Party shall also be entitled to apply for injunctive relief in a court of appropriate jurisdiction in the event of breach or threatened breach of any of the terms of this Agreement against the other Party.
- (2) The Parties hereby agree to request or accept the other Party request at the competent court to order the proceedings not being public and order the information exchanged in such proceedings confidential to the widest extent possible.

**16. No assignment**

This Agreement may not be assigned by either Party without the prior written consent of the other Party, which shall not unreasonably be withheld. No assignment shall relieve a Party of its obligations under this Agreement with respect to Confidential Information disclosed to that Party prior to the agreed assignment.

**17. Written form and severability**

(1) This Agreement may not be modified or amended except in writing, signed by authorized representatives of the Parties.

(2) If one of the provisions of this Agreement should be or become ineffective or unenforceable, this shall not affect the validity of the remainder of this Agreement. The Parties are obliged to replace the ineffective or unenforceable provision by an effective and enforceable provision approximating most closely the original provision as regards the economic result thereof.

In witness whereof the duly authorized representatives of the Parties have executed this Agreement on the day and year written below.

[enter Supplier/Business Partner]

[Place], on \_\_\_\_\_

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Signature

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Surname Name (in Block Letters)

[Place], on \_\_\_\_\_

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Signature

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Surname Name (in Block Letters)

Bürkert Werke GmbH & Co. KG

Ingelfingen, on \_\_\_\_\_

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Signature

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Surname Name (in Block Letters)

Ingelfingen, on \_\_\_\_\_

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Signature

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Surname Name (in Block Letters)